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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RAFIK MANOUK, Defendant and Appellant.	B235310 (Los Angeles County Super. Ct. No. GA081392)

APPEAL from a judgment of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed.

Elizabeth Garfinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted appellant Rafik Manouk of one count of second degree robbery in violation of Penal Code section 211.[1] The jury also found true the allegation, made pursuant to section 1203.09, subdivision (f), that the victim was over 60 years of age. Appellant was tried with a codefendant, who was also convicted of second degree robbery, and in addition was convicted of a second count of robbery as to a different victim on a different date.[2] The trial court sentenced appellant to state prison for the low base term of two years.

Appellant contends on appeal that the trial court erred by failing to instruct the jury that it should not consider for purposes of determining appellant's guilt: (1) evidence introduced at trial pertaining to an uncharged robbery (of which codefendant was convicted), and (2) an adoptive admission made by the codefendant. We are not persuaded by these contentions and therefore affirm the judgment.

FACTUAL BACKGROUND

I. The September 28, 2010 Robbery

On September 28, 2010, 74-year-old Nagshoon Safarloo was standing on a street in Glendale. Codefendant Gevork Sarkisyan exited a white van, grabbed Safarloo's gold necklace and yanked it from her, then ran away with the necklace. Safarloo saw him enter the white van, but she could not see the driver.

A nearby store's security camera captured some of the incident. It showed a white van pulling up, Sarkisyan getting out of it and moving out of view, then running back

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[1] All further undesignated statutory references are to the Penal Code.

[2] Appellant was originally charged with the second robbery (count 2) along with the codefendant, but that count was dismissed before trial as to appellant.

toward the van moments later. When later apprehended, codefendant Sarkisyan was shown the video by police and he admitted the man in the video was him.

II. The October 9, 2010 Robbery, of Which Appellant Was Convicted

On October 9, 2010, 65-year-old Arax Paghosyan was walking along a street in Glendale. She saw Sarkisyan exit a white panel van that had just driven up and parked on the street about four feet away from her. Paghosyan saw the driver of the van, whom she later identified as appellant. Sarkisyan approached her and hit her on the side, causing her to turn and drop to her knees. Sarkisyan grabbed the gold necklace she was wearing and yanked it off of her. He got back into the van and appellant drove away at a high rate of speed.

When the police arrived on the scene, Paghosyan gave them a description of appellant and Sarkisyan. Motorcycle Officer Ryan Gunn was one of the officers who responded to the dispatch call regarding a robbery involving a white panel van. He went to the scene of the robbery, but he left after seeing that other officers had already responded. He began searching the vicinity for suspects. About 10 to 15 minutes after Paghosyan was robbed, Officer Gunn saw a white van in the vicinity and stopped it. Appellant was the driver and Sarkisyan the passenger. Shortly thereafter, police officers transported Paghosyan to the location where the white van had been stopped. Before the officers said anything, Paghosyan saw Sarkisyan and appellant standing on the sidewalk and pointed them out to the officers as the men who robbed her. She said she recognized them and also the clothes they were wearing. She did not see the white van and the two men were not wearing handcuffs.

Upon being detained, appellant and Sarkisyan initially were directed to sit on the curb some distance apart from one another. Later, they were placed in the back of a patrol car. A recording device in the patrol car recorded Sarkisyan saying, "It's not us. It's not us all the way. That's it. All the way to the end." Appellant did not respond. Sarkisyan then warned appellant they should not say anything because they might be recorded. Appellant responded: "What am I even saying for it to be recorded? . . . They

brought and dropped us here for no reason. . . . I don't give a fuck if it's being recorded. What did I do for it to be recorded?"

No necklace was found on appellant's or Sarkisyan's person, in the van, or at their homes.

Paghosyan identified both men at trial.

DISCUSSION

I. Limiting Instruction Regarding Evidence of the Uncharged Crime

Appellant contends the trial court erred by refusing to give the jury a limiting instruction regarding its use of evidence pertaining to the September 28 robbery with which appellant was not charged. He asserts the evidence was tantamount to evidence of an uncharged crime that the jury could erroneously use to conclude appellant had a propensity to commit crimes. As we will explain, assuming the instruction should have been given, we conclude that any alleged error was harmless.

A. Background

Both appellant and codefendant Sarkisyan were originally charged with two counts of robbery, one occurring on October 9, 2010, involving victim Paghosyan (count 1), and the second occurring on September 28, 2010, involving victim Safarloo (count 2). Prior to trial, appellant successfully moved to dismiss the second count as to him due to insufficient evidence linking him to the September 28 crime.

At trial, appellant requested the following special instruction be given to the jury: "In count 2, Gevork Sarkisyan is charged with committing a robbery on or about September 28, 2010. Evidence concerning the September 28, 2010 allegation was admitted only against Gevork Sarkisyan. [¶] In count 1, Rafik Manouk is charged with committing a robbery on or about October 9, 2010. [¶] In deciding whether the People have met their burden in proving the truth of the charge in count 1 against Mr. Manouk, you must not consider the evidence related to the September 28 allegation."

The trial court declined to give the special instruction because some facts regarding the September 28 count, "[s]pecifically whether or not the white van was the same van that was stopped on October 9th," could be considered by the jury against appellant regarding the October 9 count. Appellant's trial counsel analogized the evidence to an uncharged offense, saying the prosecution would have to prove an uncharged offense by a preponderance of evidence in order to admit such evidence against him. The court responded that "the facts and circumstances surrounding the September 28 incident did not constitute anything close to an uncharged crime and improper character evidence because there is no evidence connecting Mr. Manouk to the crime. But the van is what is connected to the crime."

The jury was instructed that it "must separately consider the evidence as it applies to each defendant. You must decide each charge for each defendant separately."

B. Analysis

Assuming for the sake of argument that the court erred in not giving a limiting instruction, we conclude that any such error was harmless. There was ample evidence to support the jury's finding that appellant aided and abetted Sarkisyan in the commission of the robbery on October 9. The manner in which appellant drove the van demonstrated appellant's knowledge of Sarkisyan's intent and also demonstrated appellant's intent to assist Sarkisyan in the commission of the crime: he drove up to Paghosyan and stopped in close proximity to her and as soon as Sarkisyan got back into the van, appellant sped away. The jury could reasonably infer from that evidence alone that appellant was aware of the plan to rob Paghosyan and was a willing participant in executing the robbery. In addition, the jury was instructed that it "must separately consider the evidence as it applies to each defendant," and "decide each charge for each defendant separately." Under these circumstances, it is not reasonably probable that defendant would have obtained a more favorable verdict had the jury been instructed as to the proper use of the evidence regarding the September 28 robbery. (*People v. Watson* (1956) 46 Cal.2d 818,

836.) Defendant's assertion that the jury must have considered evidence of that robbery to his detriment is speculative, at best.

II. Limiting Instruction Regarding Codefendant's Adoptive Admission

Appellant further contends that Sarkisyan's acknowledgement to police that he was the person in the video of the September 28 robbery is an adoptive admission as to which a limiting instruction was required. Specifically, appellant contends that CALCRIM No. 357 was given; however, the bracketed portion of the instruction, that would have told the jury it could not consider that evidence in determining appellant's guilt, was requested but not given.[3] We disagree.

As respondent points out, Sarkisyan may have made a direct, verbal admission. It was not an adoptive admission. It would have been if, for example, the police had said, "the person in the video looks like you," and Sarkisyan had said nothing to deny the statement. Sarkisyan's statement regarding the video is the only statement appellant discusses on appeal with regard to the purported instructional error. Because it is not an adoptive admission, we conclude there was no error.

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[3] CALCRIM No. 357 provides as follows: "If you conclude that someone made a statement outside of court that (accused the defendant of the crime/[or] tended to connect the defendant with the commission of the crime) and the defendant did not deny it, you must decide whether each of the following is true:

"1. The statement was made to the defendant or made in (his/her) presence;

"2. The defendant heard and understood the statement;

"3. The defendant would, under all the circumstances, naturally have denied the statement if (he/she) thought it was not true;

"AND

"4. The defendant could have denied it but did not.

"If you decide that all of these requirements have been met, you may conclude that the defendant admitted the statement was true.

"If you decide that any of these requirements has not been met, you must not consider either the statement or the defendant's response for any purpose.

"[You must not consider this evidence in determining the guilt of (the/any) other defendant[s].]"

In addition, we note that the jury was instructed that it could consider Sarkisyan's statements to the police only against him, not against any other defendant. That instruction applied to all of Sarkisyan's statements, and is the equivalent of the omitted language appellant contends should have been given. We conclude there was no instructional error in this regard.

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.